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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 EDUARDO MALDONADO LOPEZ
11 and ALEJANDRO LOPEZ
12 FERREIRA,

Plaintiffs,

13 vs.

14 AQUI ES TEXCOCO, INC.,
15 FRANCISCO PEREZ, and DOES 1-
16 10, inclusive,

Defendants.

CASE NO. 12-CV-1215 BEN (WVG)
CASE NO. 12-CV-2113 BEN (WVG)

**ORDER DENYING MOTION TO
CONSOLIDATE CASES FOR
TRIAL AND ADOPT A
UNIVERSAL SCHEDULING
ORDER**

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18 AQUI ES TEXCOCO, INC., a
19 California Corporation; FRANCISCO
PEREZ, an individual,

20 Plaintiffs,

21 vs.

22 EDUARDO MALDONADO LOPEZ,
an individual; ALEJANDRO LOPEZ
23 FERREIRA, an individual; SANDRA
CASTILLO, an individual; all
defendants doing business as Aqui
24 Esta Texcoco; AQUI ESTA
25 TEXCOCO, a business entity; DOES 1
through 10, inclusive,

26 Defendants.

1 Before the Court is a motion to consolidate two cases for trial. The cases are:
2 *Eduardo Maldonado Lopez et al. v. Aqui Es Texcoco, Inc. et al.*, U.S. District Court
3 Case No. 3:12-cv-01215-BEN-WVG (“the Wage case”), and *Aqui Es Texcoco, Inc.*
4 *et al. v. Eduardo Maldonado Lopez et al.*, U.S. District Court Case No. 3:12
5 cv-02113-BEN-WVG (“the Trademark case”). In the Wage case, Eduardo
6 Maldonado Lopez and Alejandro Lopez Ferreira assert claims for unpaid overtime
7 and other wages against defendants Aqui Es Texcoco, Inc. and Francisco Perez. In
8 the Trademark case, Aqui es Texcoco and Francisco Perez assert claims against
9 Eduardo Maldonado Lopez, Alejandro Lopez Ferreira, and others. That case
10 involves claims of trademark infringement, trade libel and trade secret
11 misappropriation.

12 Aqui Es Texcoco, Inc. and Francisco Perez request consolidation and adoption
13 of the Court’s scheduling order in the Trademark case for both actions. Currently,
14 the Wage case has a Final Pretrial Conference set for October 28, 2013, and the
15 Trademark case has a Final Pretrial Conference set for April 7, 2014. Discovery is
16 closed in the Wage case.

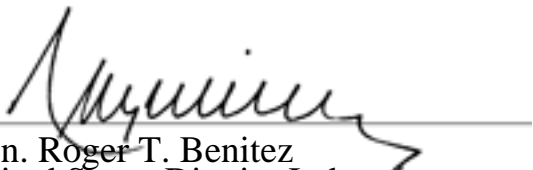
17 The extent to which the opposing parties support or oppose consolidation is
18 unclear. On June 12, 2013, counsel for Eduardo Maldonado Lopez, Alejandro
19 Lopez Ferriera, and others in the Trademark case filed a notice of joinder on his
20 clients’ behalf. On June 25, 2013, the attorney for Eduardo Maldonado Lopez and
21 Alejandro Lopez Ferriera in the Wage case *opposed* the motion on Lopez’s behalf
22 (the attorney stated that he had been unable to reach Ferreira). The Court need not
23 resolve this inconsistency. It declines to order consolidation. *See* CivLR 7.1.d.1 (“A
24 judge may, in the judge’s discretion, decide a motion without oral
25 argument.”)

26 The Court has discretion to consolidate cases that involve a “a common
27 question of law or fact.” Fed. R. Civ. P. 42(a); *In re Adams Apple, Inc.*, 829 F.2d
28 1484, 1487 (9th Cir. 1987). However, “[w]here a case that is ready for or close to

1 trial would be held up pending completion of pretrial proceedings in another case,
2 courts have consistently denied consolidation.” *Antoninetti v. Chipotle Mexican*
3 *Grill, Inc.*, No 05-CV-1660-J WMC, 2007 WL 2669531, at *2 (S.D. Cal. Sept. 7,
4 2007). Because discovery has closed in the Wage case, and because the legal and
5 factual overlap between these cases is minimal, consolidation for the purposes of
6 trial is not appropriate at this juncture. The motion is denied. The hearing on this
7 motion, scheduled for July 8, 2013, is vacated.

8 **IT IS SO ORDERED.**

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10 DATED: June 27, 2013

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13 Hon. Roger T. Benitez
14 United States District Judge
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